

Approved as Submitted: September 17, 2003

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – SEPTEMBER 3, 2003**

CALL TO ORDER

Mayor/Chairperson Kennedy called the special meeting to order at 6:03 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang, Sellers, Tate and Mayor/Agency Chairperson Kennedy

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

City Attorney/Agency Counsel Leichter announced the following closed session items:

CLOSED SESSIONS:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Legal Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	2

2.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Legal Authority:	Government Code 54957
Public Employee Performance Evaluation:	City Manager
Attendees:	City Council, City Manager

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Legal Authority:	Government Code section 54956.9(a)
Case Name:	Allivato v. City of Morgan Hill et al.
Case Number:	Santa Clara County Superior CV 810111
Attendees:	City Attorney, City Manager

4.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority:	Government Code 54956.8
Property:	215 Tennant Avenue, APN: 817-04-002
Negotiating Parties:	
For City:	City Manager, Director of Public Works, and Attorney Gale Connor

For Property Owners:	Robert and Teresita Carrasco and Bruce Tichinin
Closed Session Topic/Under Negotiation:	Price and Terms of Payment

5.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority:	Government Code 54956.8
Property:	95 Tennant Avenue, APN: 817-04-008
Negotiating Parties:	
For City:	City Manager, Director of Public Works, and Attorney Gale Connor
For Property Owners:	Marko and Klara Gera
Closed Session Topic/Under Negotiation:	Price and Terms of Payment

6.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority:	Government Code 54956.8
Property:	145 Tennant Avenue, APN: 817-04-008
Negotiating Parties:	
For City:	City Manager, Director of Public Works, and Attorney Gale Connor
For Property Owners:	Joseph Hernandez, as trustee; et al
Closed Session Topic/Under Negotiation:	Price and Terms of Payment

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairperson Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairperson Kennedy adjourned the meeting to Closed Session at 6:05 p.m.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 7:06 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session this evening. However, last week (August 27, 2003) in the case of Kennedy vs. Davis, the Council determined not to continue the appeal on this matter. She requested that the City Clerk amend the August 27, 2003 minutes to reflect this announcement.

SILENT INVOCATION

Mayor Kennedy requested that individuals remember a good friend and community leader Henk Marselis, his family and friends in thoughts and prayers.

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairperson Kennedy, Gloria Pariseau led the Pledge of Allegiance.

PROCLAMATIONS

Mayor Kennedy declared the week of September 17 through 23, 2003 as ***Constitution Week***, and presented this proclamation to Marion Smith of the Gavilan Chapter of the Daughters of the American Revolution.

Ms. Smith indicated that this proclamation will be placed in the Gavilan Chapter's library and will be asking the library if they will display the proclamation so that it may be shared with the public. If Gavilan Chapter no longer has a chapter in Gilroy, the proclamation will be sent to the State Daughters of the American Revolution's library.

Mayor Kennedy declared September as ***National Alcohol and Drug Addiction Recovery Month*** to offer advocates of substance abuse treatment an opportunity to educate the public about the effectiveness of treatment.

PRESENTATION

Carol Holzgrafe reported that the City of Morgan Hill was incorporated on November 6, 1906, noting that November 6, 2006 is coming up. In order to take full advantage of a centennial celebration, the Historical Society suggests that a year long party be planned, kicked off on Founders Day, November 5, 2005. This will give the community more than two years to plan a year long celebration that will make the community proud. She indicated that the Historical Society offers to spear head the celebration, acting as a steering committee. She felt that other organizations in town with historic roots will want to participate as well (e.g., churches, businesses, schools, old time/new families, service organizations, etc.). She stated that the Historical Society would like to return in a few weeks with an agenda item to begin formalizing the Morgan Hill centennial. She invited the entire Council to join the Historical Society as honorary members of the centennial committee.

On behalf of the Historical Society, Gloria Pariseau presented the City of Morgan Hill with a Morgan Hill Rose. It is the Historical Society's hope that the rose will be planted at the new Community and Cultural Center. She informed the Council that a while back, the Historical Society submitted applications for nominating the Morgan Hill Playhouse and the Morgan Hill Grammar School to the Office of Historic Preservation for the Governor's award. She said that the playhouse was given special mention and that the Morgan Hill Grammar School won the award and will be receiving the 2003 Governor's award for Historical Preservation.

CITY COUNCIL REPORT

Council Member Chang reported on the following: 1) Last night, the Day Worker Committee installed four of seven board members. She indicated that a fundraiser New Year's Eve Party is being planned to raise enough money for next year's operation. It was her hope that all Council members will be able to

participate and help out with the fund raiser event and that the Day Worker Center facility is completed by November 2003. 2) She indicated that SCRWA originally won a lawsuit, looking at various ways to discharge water. However, the Regional Board has appealed. Therefore, the alternatives for water discharge are being discussed and will be rediscussed at the next SCRWA meeting.

COUNCIL SUBCOMMITTEE REPORT

Council Member Sellers stated that next week all Council members will be attending the annual League of California Cities convention in Sacramento. This convention takes added importance this year due to all of the activities taking place at the State level. He stated that cities are considering placing a measure on the November 2004 ballot that would change the relationship between cities and the State. The measure would provide assurances in terms of funding that cities receive annually. He indicated that Mayor Kennedy has been appointed to be the representative to the main general assembly. The City's Legislative Subcommittee met to review the measures that will be reviewed by the League of California Cities' general assembly. One resolution will ratify the League's recent vote to sponsor an initiative to be placed on the November 2004 ballot. He stated that the Legislative Subcommittee recommends that the Council approve this resolution. He said that there are some details about the initiative that the Legislative Subcommittee has questions about in terms of how the League is planning on proceeding. However, the Legislative Subcommittee supports the ideas as it would provide an opportunity to constitutionally mandate that the annual revenue funds that the City receives are stabilized in order to provide basic services to the community.

Council Member Tate said that the Library Subcommittee is in the process of getting ready for the State's award of the second round of Proposition 14 funding for new libraries. He requested that citizens help convince the State Board making the decisions that the City has an outstanding application by writing letters to State Board members. He indicated that the selection meeting for the second round of Proposition 14 funding will be taking place at the end of October. This gives the City a little extra time to get the letters sent to the Board.

Mayor Kennedy reported on the Urban Limit Line/Greenbelt Committee. He indicated that the committee has held several meetings. He indicated that a special workshop will be held on Saturday, September 13 from 8:30 a.m. to 12:30 p.m. in the Villas Conference Room. He invited those interested in the establishment of a greenbelt/urban limit line around the City to attend the meeting. An important issue to be discussed at this meeting is what to do with the southeastern portion of the City near Tennant and Murphy Avenues. Does the community want to keep this area as an agricultural buffer or proceed with an ultimate plan to use this area as an industrial park? There is another proposal for Edmundson near DeWitt Avenue with respect to the establishment of a greenbelt and urban limit line around the city. He indicated that in the late 1980's the city passed an advisory measure that determined that the majority of the residents of Morgan Hill would like to see a greenbelt around the city. This has been a policy statement contained in the City's General Plan and that the City is now moving forward to making this a reality. He indicated that this will be a controversial issue but that it is an important issue for the ultimate future of the community. He announced that the City will be sending a delegation to establish a second Sister City with San Martin di Hidalgo, Mexico. He stated that he and Mayor Pro Tempore Chang will be traveling to Mexico with the City's Sister City Committee to formalize the sister city

relationship at their own expense. He felt that it was important to the cultural development of the community to build bridges with communities with common interests. He indicated that the City's First City relationship is with San Casiano, Italy. He noted that there is a strong Latino/Mexican-American community in Morgan Hill. Therefore, it is important for the City to establish a relationship with a City in Mexico as well. He stated that the Sister City Delegation will be leaving on September 14 and will be in San Martin di Hidalgo for their Independence Day celebration on September 15 and 16. He indicated that neither he nor Mayor Pro Tempore Chang will be in attendance at the September 17 City Council meeting.

CITY MANAGER REPORT

City Manager Tewes invited the community to a fun/free event on Saturday, September 6 – "Movie Night Under the Stars" to be held at the Community and Cultural Center's amphitheater. He was pleased that the Chamber of Commerce has taken on the responsibility of carrying on a project started by last year's Leadership Morgan Hill class. There will be activities taking place beginning at 4:00 p.m. with the movie to be shown at dusk.

Council Member Tate indicated that on Sunday, September 7, the Morgan Hill Community Foundation will be sponsoring a Hawaiian Luau at the San Martin Pumpkin Patch. He stated that on September 11, the annual Remembrance Celebration will be held at the Community and Cultural Center at noon. Also, that evening, a two hour program on "What Freedom Means to You" will take place at the Community and Cultural Center's El Toro Room, sponsored by the Morgan Hill Library, Silicon Valley Library system, the City of Morgan Hill, San Jose Mercury News, the American Leadership Forum and the Community Foundation of Silicon Valley. This program will take place from 7-9 p.m.

CITY ATTORNEY REPORT

City Attorney Leichter stated that she did not have a City Attorney's report to present this evening.

PUBLIC COMMENT

John Rick, on behalf of the Morgan Hill Aquatics Foundation, stated his appreciation to the City Council, City Manager and staff for allowing them to hold the Cool Pools Festival on August 23 at the Community and Cultural Center's amphitheater. He was pleased to report that the Foundation netted over \$40,000. He was confident that the Foundation can build critical mass for this event and increase attendance and turn it into a very profitable endeavor for the aquatics center in future years. The Foundation remains confident that it will have \$100,000 or more in the bank by the time that the revenue curve for the aquatics center starts flattening out next September.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy indicated that he would remove Item 1 from the Consent Calendar as a citizen was in attendance to address that item.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 2-12, as follows:*

2. **PERFORMANCE AUDIT CONTRACT FOR SOUTH VALLEY DISPOSAL**
Action: **Authorized** the City Manager to Execute an Agreement with Environmental Planning Consultants in the Amount of \$37,400.
3. **CANCELLATION OF AGRICULTURAL PRESERVE AND LAND CONSERVATION CONTRACTS**
Action: **Adopted** Resolution No. 5716, Cancelling Land Conservation Contract.
4. **AMENDMENT OF AGRICULTURAL PRESERVE AND LAND CONSERVATION CONTRACTS**
Action: **Adopted** Resolution No. 5717, Amending Agricultural Preserve Resolution No. 1258.
5. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9383, STERLING ESTATES**
Action: 1) **Adopted** Resolution No. 5718, Accepting Subdivision Improvements Included in Tract 9383, Commonly Known as Sterling Estates; and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.
6. **REIMBURSEMENT FOR UNDERGROUNDING OF OVERHEAD UTILITIES BY LIVE WIRE, L.L.C. (HARLEY DAVIDSON)**
Action: **Authorized** Reimbursement of \$53,185 for Undergrounding of Overhead Utilities by Live Wire, L.L.C.
7. **ADOPT ORDINANCE NO. 1628, NEW SERIES**
Action: **Waived** the Reading, and **Adopted** Ordinance No. 1628, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA-03-03: HALE-GARCIA (APN 764-09-27 and 764-09-026).**
8. **ADOPT ORDINANCE NO. 1629, NEW SERIES**
Action: **Waived** the Reading, and **Adopted** Ordinance No. 1629, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ENACTING CHAPTER 8.80 (Disking Restrictions) OF TITLE 8 (HEALTH AND SAFETY) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING RESTRICTIONS ON DISKING VACANT LAND .**

9. **ADOPT ORDINANCE NO. 1630, NEW SERIES**

Action: Waived the Reading, and Adopted Ordinance No. 1630, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTIONS 18.30.010, 18.30.020, 18.30.050, AND 18.30.110 OF CHAPTER 18.30 (PUD PLANNED UNIT DEVELOPMENT DISTRICT) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING AMENDMENT FOR CONSISTENCY WITH MOBILE HOME CONVERSION ORDINANCE.

10. **ADOPT ORDINANCE NO. 1631, NEW SERIES**

Action: Waived the Reading, and Adopted Ordinance No. 1631, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADOPTING CHAPTER 17.38 (MOBILE HOME PARK CONVERSIONS TO RESIDENT OWNERSHIP OR TO ANY OTHER USE) OF TITLE 17 (SUBDIVISIONS) OF THE MORGAN HILL MUNICIPAL CODE.

11. **APPROVED SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR AUGUST 20, 2003**

12. **AUTHORIZE REIMBURSEMENT/CREDIT OF TRAFFIC IMPACT FEES TO SOUTH VALLEY DEVELOPERS, INC. – MONTEREY ROAD APN 764-10-004**

Action: 1) Approved an Appropriation of \$210,723 from the Current Year Unappropriated Traffic Impact Fee Fund and 2) Authorized Reimbursement of These Funds to South Valley Developer, Inc.

1. **HIGH SPEED RAIL ROUTE – Resolution No. 5715**

City Manager Tewes presented the staff report and indicated that the recommendation is that the Council oppose an alternative route through Henry Coe State Park for high speed rail.

Dennis Pinion stated that he has heard two explanations why a route is being proposed through Henry Coe State Park: 1) The High Speed Rail Committee's computer software was unaware that the Park was located at this location; and 2) a rail through Henry Coe State Park would be several million dollars cheaper to put the high speed rail through the park because the park is empty space. He pointed out that this is a multi billion dollar project. He felt that keeping wilderness areas as wilderness is worth something to citizens. He requested that the Council support the resolution. He indicated that he does not oppose high speed rail but when you take public lands and set them aside for permanent wilderness space, it should remain as permanent wilderness space.

Council Member Carr stated his support of high speed rail and the bonds that will be placed on the ballot. However, he does not agree with a route that would come through a treasured wilderness area.

Whatever savings may result would be lost forever in the damage that would be done to Henry Coe State Park. He felt that there were other alternative routes that can be used that would make a lot more sense for routing. He requested that the Council support the resolution in letting the High Speed Rail Authority know that as the closest neighbor to the area, the City is opposed to High Speed Rail going through this Park.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Adopted** Resolution No. 5715*

City Council Action

PUBLIC HEARINGS:

13. **DEVELOPMENT AGREEMENT AMENDMENTS, DAA 99-04/DAA 00-07/DAA 01-01: EAST DUNNE-PACIFIC UNION HOMES (TROVARE/MORGAN MEADOWS) – Ordinances Nos. 1632, 1633 and 1634**

Mayor Pro Tempore Chang stated that she would be recusing herself from this item due to a conflict of interest and excused herself from the Council Chambers.

Director of Community Development Bischoff presented the staff report.

Council Member Sellers noted that staff indicated that the School District did not agree that a light was needed at Live Oak High School. He inquired whether this was a conversation between the City and the School District prior to the change in the Measure P commitment requirement? He inquired as to the degree the City is interacting with the School District at the front end of discussions so that Measure P commitments are helpful.

Mr. Bischoff indicated that it is the Measure P applicant that identifies the commitments that they would like to include as part of their Measure P proposal. The commitments are reviewed and scored by the School District. At the time the project was recommended for award of points by the School District, he was not aware whether the School District indicated that they were interested in these improvements.

Council Member Sellers recommended that there be better coordination of commitments at the front end of Measure P versus reviewing what other Measure P commitments have been made by others.

Mayor Kennedy felt that the flashing light in front of the Nordstrom School was an important issue.

Council Member Tate expressed concern with the Hung property and the fact that it would remain an island because they refuse to cooperate with the City. It was his belief that the Grewal property located to the west of this project would be widening Dunne Avenue. He said that Dunne Avenue would not be completed because the Hungs are not willing to allow widening improvements to be installed. He inquired why the Grewal project was not conditioned to widen Dunne Avenue.

Mr. Bischoff indicated that if a property owner is not willing to grant the City the right of way for Dunne Avenue widening, there is nothing the City can do short of condemnation/use of eminent domain. He felt that at some point in time, there will be a higher and better use for the Hung property and that they would be interested in selling the property. He indicated that the Grewal project was conditioned to widen Dunne Avenue. He noted that the Grewal project has been subject to a number of extensions of time and that there is some question as to whether or not the project would be built. If the project proceeds, it is his understanding that the City would condition the Grewal project to provide some other alternative improvement or the Hung's may cooperate with widening of Dunne Avenue.

Mayor Kennedy opened the public hearing.

Chris Taylor, Pacific Union Homes, stated that he would agree to install certain improvements within the Nordstrom School parking lot (e.g., bus turnout or provide stacking for eight vehicles). He indicated that this has been a difficult project for Union Pacific Homes, purchasing the property at the top of the market. He requested that the Council recognize that Union Pacific Homes has made the project work and tried to deliver on the product promised at the beginning. He indicated that along the way, Union Pacific Homes has had to incur a number of issues where it had to be flexible in re-designing certain improvements, having a great working relationship with staff to do so. He indicated that Union Pacific Homes is almost completed with these projects, subject to the Council's approval on the two other amendments to the development agreement. He indicated that the crews are ready to install the improvements and that project development is far along. In the Development Agreement, it specifies that the School District is to install the improvements or that he can work with the School District to design an alternative or pay a monetary fee. The School District indicated that they did not want the improvements and came to an agreement that would allow the project to pay \$66,000 that they believe the improvements are worth. This would relinquish the need to design alternative improvements. He noted that a letter has been included in the Council's packet from the School District that outlines the payment of a fee. He said that the project would be facing a hardship should it be required to come up with a new project at this stage. He clarified that Union Pacific Homes would like to pay collectively a total of \$66,000 in lieu of building an alternative to the bus turn out for up to 3 buses or eight cars for safety improvements at the Nordstrom School. He said that an issue that was raised at the Planning Commission meeting was that the money would be going directly into the School District's coffers. He said that Union Pacific Homes would agree to place these fees into any fund/joint fund and have another developer make the improvements when they are ready to proceed with development. He said that he would prefer to pay the in lieu fees versus completing the improvements. It was his belief that staff was recommending that an alternative be pursued that is yet to be identified, making this an open ended issue.

No further comments being offered, the public hearing was closed.

Mr. Bischoff said that this is an issue of whether there are improvements to be made or funds to be paid and to whom. He referred to page 121 of the agenda packet, subparagraph (ii), last sentence which states that "Project alternative an estimate amount subject to the approval of the Director of Public Works." He felt that the language was sufficiently vague that it would not necessarily require that the improvements be identified and installed prior to the completion of the subdivision. He said that this

language could be modified to ensure that there is adequate flexibility such that this project could be completed and the public improvements that would benefit the School District could be built at a later date.

Mayor Kennedy indicated that what the applicant is proposing is similar to a deferred improvement agreement. He inquired whether an account has been established where funds could be deposited to do what is being suggested by Mr. Taylor.

Mr. Bischoff indicated that a payment of a fee could be made to the City for improvements to be jointly developed between the School District and the City sometime in the future.

Mayor Kennedy stated that he would support such a modification.

Council Member Sellers felt that it would be an undue burden to place on a developer to have them wait for the City to come up with an alternative. He said that it would make sense to have funds placed in a specific account and not merely placing them in a School District account (place funds into an account for a specific project for a specific purpose, informing the School District that they get to determine how these funds are to be used). He felt that doing so would benefit everyone and allow the developer to complete this project.

Council Member Carr stated his concurrence with staff's recommended language. However, he expressed concern with the letter dated January 22, 2003 from Bonnie Branco, Deputy Superintendent, who states that the School District has already developed steps to mitigate the parking issue at Nordstrom School.

Mr. Bischoff indicated that the funds would be used to install other improvements as determined by the School District at some point in the future. He said that the City would need to sit down with the School District to determine what improvements would entitle the project to the same number of points under the same category. He suggested that the Council amend page 121, subparagraph (ii) to include the following: "...Project approval, including in lieu payments..." In response to Council Member Tate's question he said that the in lieu payment is defined in Ms. Branco's letter and that it was his belief that the sum total would equate to approximately \$66,000.

City Manager Tewes said that this amendment could be discussed at the City-School Liaison Committee meeting.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Waived** the Reading in Full of Ordinance No.1632, New Series, Development Agreement DA 99-04.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council **Introduced** Ordinance No.1632, New Series, Amending Development Agreement DA 99-04 by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE***

NO. 1472, NEW SERIES, TO AMEND DEVELOPMENT AGREEMENT DA 99-04 TO ALLOW AMENDMENT TO THE SCHOOLS CATEGORY COMMITMENT FOR MEASURE P PROJECT MP-98-24: E. DUNNE-O'CONNELL, by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.

Action: On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Waived** the Reading in Full of Ordinance No. 1633, New Series, Development Agreement DA 00-07.

Action: On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1633, New Series, Amending Development Agreement DA 00-07 by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1503, NEW SERIES, TO AMEND DEVELOPMENT AGREEMENT DA 00-07 TO ALLOW FOR FLEXIBILITY IN THE CIRCULATION AND SCHOOL CATEGORY COMMITMENTS FOR MEASURE P PROJECT MP-99-16: E. DUNNE-TROVARE**, Amending Section 7, paragraph 14, section (j), subsection (ii) to include the following sentence: "Should the Nordstrom School improvements not be installed and agreement not be reached regarding an equivalent alternative by completion of the subdivision which is subject to this development agreement, an in lieu fee shall be paid to the City and held until such time as the alternative improvement(s) is identified and installed" by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.

Action: On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Waived** the Reading in Full of Ordinance No. 1634, New Series, Development Agreement DA 01-01.

Action: On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1634, New Series, Amending Development Agreement DA 01-01 by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1511, NEW SERIES, TO AMEND DEVELOPMENT AGREEMENT DA 01-01 TO ALLOW FOR FLEXIBILITY IN THE SCHOOLS AND CIRCULATION CATEGORY COMMITMENTS FOR MEASURE P PROJECT MP 00-29: E. DUNNE-TROVARE**, Amending Section 9, Paragraph 14, section (n), subsection (v) to include the following sentence: "Should the Nordstrom School improvements not be installed and agreement not be reached regarding an equivalent alternative by completion of the subdivision which is subject to this development agreement, an in lieu fee shall be paid to the City and held until such time as the alternative improvement(s) is identified and installed" by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.

Mayor Pro Tempore Chang resumed her seat on the dais.

City Council Action

OTHER BUSINESS:

14. HEARING FOR EXEMPTION TO UNDERGROUNDING UTILITIES – 17500 DEPOT STREET

Director of Public Works Ashcraft presented the staff report.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Granted** Exemption to the Requirement to Underground Utilities with Payment of in Lieu Fees for the Proposed Development at 17500 Depot Street.*

15. YMCA CONTRACT FOR PROGRAMMING AT THE INDOOR RECREATION CENTER

City Manager Tewes indicated that staff and a subcommittee of the City Council are recommending an important policy decision for Council consideration; one in a series of decisions the Council has made and is by no means the end of important policy decisions it has to make in order to bring the Indoor Recreation Center (IRC) to reality. In May 2002, the Council decided that the City would be responsible for operating the IRC, including its programming. The Council also directed staff to work with the YMCA to find a way by which they can become involved in the IRC in a way that would be meaningful to the City's programming, allowing them to remain viable in South County. The subcommittee has been discussing with the YMCA various ways to accomplish this the past year. It is being recommended that the City move toward the next step to develop a contract with the YMCA to provide staffing services at the IRC. The YMCA would be providing the individuals/staff that would provide the services to deliver aquatics, fitness and aerobics programs at the IRC. The types, schedules and prices for classes are to be determined by the City. The staffing for this proposal would be provided under contract with the YMCA. He said that there are many other policy decisions to be made by the Council such as how big the physical spaces should be and what should be included in the spaces. Recently, the Council decided that the City could not afford all of the space originally contemplated and reduced the size of the building. The Council directed staff to contract with a consultant to help the City evaluate the revenue potential of the smaller facility with a proposed mix of services. He indicated that in May 2002, the facility being discussed at that time gave the City a fighting chance to break even with no guarantee that through a series of passes and user charges it would be able to generate enough revenue to cover all of the City's operating costs but that staff felt that it had a fighting chance to do so. On this basis, the Council engaged on a debate on who ought to control the facility: the City or the YMCA. The Council concluded that the City should control the facility. He felt that the City still has a fighting chance to break even. However, he acknowledged that should the City contract with the

YMCA, it is likely that the cost to operate the aquatics, fitness and aerobics would be more than if they were provided by city staff alone. He noted that this is a contract to provide for the direct cost of the YMCA plus a portion of their administrative costs. Therefore, overhead helps explain why the YMCA's costs may be slightly more than if the City operated the IRC. Also, the YMCA is willing to talk to the City about a commitment that would allow them to operate these services in a manner consistent with their facility for delivery of such services. He said that this may lead to different levels of staffing than if the City alone was to provide these services (e.g., direct versus indirect supervision for the open and free use of the fitness room for 12 hours a day).

City Manager Tewes stated that the IRC subcommittee believes that there are benefits to this approach and that it is being recommended that the approach of contracting with the YMCA for services and staffing meets the two objectives established by the Council in May 2002, giving the City a fighting chance to break even while acknowledging that in order to keep the YMCA involved and viable, there may be some marginal increased costs in going with the YCMA versus using City staff. He indicated that the Recreation and Community Services Manager Spier and Assistant to the City Manager Dile were present to answer any specific questions and that additional information is available that may answer questions as they arise.

Council Member Carr indicated that he serves on the IRC Subcommittee and that the Subcommittee has worked on the process for over a year to get to a point where it is recommending a policy decision to the City Council. He clarified that the subcommittee is not recommending the details of negotiations or a contract. The details/contract would return to the Council after additional work is completed. He indicated that the subcommittee is recommending a policy decision at a certain level that suggests that the subcommittee can move forward with contract negotiations, returning with the specifics of the contract with an understanding of the dollar ramifications a little more, along with other implications. He stated his support of the recommendation.

Mayor Kennedy said that the Council made a decision to have City recreation staff control the operation of the IRC. However, there was a general consensus of the Council that it wanted to find a role for the YMCA so that they would be able to continue their operation in Morgan Hill. He felt that this is what this proposal does. He said that it was important to note that the numbers being presented this evening are estimates and not the final numbers. He said that the final numbers will be subject to negotiations with the YMCA. He noted that the recommended action was to authorize City staff to negotiate an agreement with the YMCA.

Council Member Tate noted that City Manager Tewes alluded to the fact that the YMCA has come a long way from the model of membership. However, he does not have information on the model being proposed by the YMCA or what the relationship would be. He noted that Council Member Carr alluded to the fact that the Council agreed that City staff would have control over the operation. He did not see how this would work if the YMCA is controlling the programs. He requested more details on the proposal of how this interaction will work.

City Manager Tewes distributed a summary to address some of the questions raised by Council Member Tate. He said that it was important to point out that under the proposal, the YMCA would not control

the programs. He clarified that City staff would be responsible for programming all spaces, scheduling all spaces, and establishing the prices and reservation policies for all of the spaces. The YMCA would staff the aerobics, fitness and pool classes by contract. City employees would be responsible for staffing the youth/senior center, the gymnasium and the balance of the spaces. The City would have site administration responsibilities for all of the spaces and for maintaining all of the spaces. By contract, the City will be negotiating the staffing levels for these programs.

Assistant to the City Manager Dile said that the numbers used for the City's operational costs and for the cost of running the facility were based on the Sports Management Group analysis performed for the City in January 2002. One thing noted in staff report and through some of the supporting materials is that staff recognizes that this analysis is in the process of being refined. She pointed out that the assumptions being made are from the best information staff has at this time and that they are subject to change. Staff presented three different ways of operating the IRC. In all cases, the City would control all aspects of programming. However, staff would like to talk with the YMCA to see if they have alternatives to the Sports Management Group recommendation. A question to be answered is whether revenues can be boosted if the City was to look at changes to what the Sports Management Group had recommended. She indicated that the subcommittee looked at two areas: 1) whether or not the City would include group classes within the facility; and 2) changes to the price of the group swim lessons. She indicated that it has been the YMCA's experience that they are able to charge far more than municipal programs typically do. It is felt that there may be some tolerance for a higher level of cost if the community found that the YMCA is offering the classes. This scenario would increase the revenue and narrow the gap between the YMCA's operating costs and the City's operating costs. Another alternative reviewed was changing the mix of programming at the pool. In a third alternative, the subcommittee looked at still having a substantial amount of recreational time and group swim classes at the pool, increasing the number of lessons year round to boost the revenue that would be coming into the center. She stated that staff has done the best that it could with the limited information available. Critical to this was the fact that the IRC facility was supposed to have been built prior to the aquatics complex opening. Therefore, the shift in timing may be shifting what is an already established program at the aquatics complex by the time the IRC is built. She indicated that it was her understanding that the Sports Management Group's current assignment at the aquatics complex is to come up with more details on what the pricing and classes should be at the aquatics center. She said that many decisions at the aquatics center have yet to be made and will have an impact on the revenue to be generated at the IRC. She said that the subcommittee has done the best that it could with limited options at this point.

City Manager Tewes said that the Subcommittee is not recommending that the Council decide on any of the scenarios as described by Ms. Dile. He stated that there are many important public policy decisions to be made by the Council such as the price to participate in the various classes to be offered at the IRC. A question to be answered is the City's philosophy about open swim versus scheduled classes at the indoor pool. He said that these are decisions yet to be made. He said that there may be a variety of options that could be accommodated. Staff recognizes that the City is at the stage of the physical design of the building and that the YMCA would like to have some input into the design process. If the City is to contract with the YMCA, staff would recommend that the YMCA identify an individual who would participate in the design aspect.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Council Member Sellers said that the Council could theoretically decide to delay this decision if the majority of the Council felt that it was warranted. He requested, as the co-chair of the IRC with Mayor Pro Tempore Chang, that the Council include the YMCA in subsequent meetings as their input would be valuable in the process, should the Council wish to pursue a contract with the YMCA.

Council Member Tate said that he has a problem approving an action that is predicated on the best knowledge that the City has right now that it will be losing money on operations and maintenance. It was his feeling that there is a Council commitment to look at operations and maintenance of all public projects and find a way to make them work. He understands that the Council has committed some general fund monies to the Community and Cultural Center. He felt that every project beyond that project needs to be made self sufficient. He stated that he could not approve an action that goes in a direction that leaves the City losing money and not balancing operations and maintenance of a project. He stated his support of having the YMCA involved with the IRC. However, he is being told that if the City runs the IRC, it can be a positive project that can pencil out. Should the YMCA staff the classes, the City will lose \$20,000. He acknowledged that there may be some factors that may change this. He wanted to receive this information before finalizing his decision as he could not support an action where the City is going to lose money. He would support having a YMCA representative looking at the design but that he could not state that he would support a situation where the City cannot balance operations and maintenance on this project, nor using monies from the general fund to offset the deficit. He did not want to close the door on the YMCA as he does support them. However, he wants to receive an update from the Sports Management Group and review options.

Council Member Carr did not see a problem in delaying a decision this evening if the Council agrees to move forward with asking the YMCA to identify an individual to join the design team because the knowledge base is important at this time. He said that additional information is available and forthcoming. He stated that he would support waiting for the additional information. It was his hope that the Council was not suggesting that the design of the IRC be delayed as the City is embarking on a stage where it will be spending a significant amount of money on the design of the center.

Mayor Pro Tempore Chang inquired whether the scope of the design would change and whether additional office space would be needed to incorporate YMCA staff at the IRC.

Mayor Kennedy said that the scenario presented in the staff report indicates that approximately a \$20,000 subsidy would be required to incorporate YMCA staffing. He said that there are some preliminary recommendations that the YMCA made under which the net subsidy would drop to approximately \$7,600. Another scenario shows that there would be a net profit of approximately \$20,000 by adding additional swim classes, etc. He said that these are all preliminary numbers. He felt that by working with the YMCA and including their features in the facility may result in no City subsidy.

Mayor Pro Tempore Chang said that the scenario that shows a positive \$20,000 would cut into the summer operation of the aquatics center and may take customers away from that center.

Mayor Kennedy felt that there would be different groups using the indoor facility versus an outdoor facility.

City Manager Tewes said that he wanted to make clear that it would be City staff, with the guidance of the City Council, who would make the decision about the level of programming and the potential competition. Once a decision has been made, there is a question as to who will staff the indoor aquatics center classes, city employees or YMCA employees.

Council Member Sellers felt that there was a clear distinct objective for this facility as opposed to the outdoor aquatics facility. He stated that having spent the time going through the material presented and having visited a few facilities, he understands the interrelationship between the facilities. He felt that the Council and the community have to be clear that the two facilities would be complimentary to each other. He agreed that operations and maintenance is paramount but that the Council cannot just look at the bottom line when it proceeds with this project. The Council has to consider that it is trying to provide services to the community that its tax dollars are going toward in the most cost effective way. He felt that the Council needs to provide the services that are wanted and needed in the community and then figure the best way to provide these services. He felt that the YMCA can provide the City with an opportunity of a higher level of service in terms of staffing and expertise, and that this would be a reasonable trade off. He stated that when he read the staff report, he interpreted it as being an agreement to proceed with negotiations with the YMCA. If the action is merely to agree to negotiate with the YMCA, he would be comfortable with proceeding with this action. He stated that he would be comfortable proceeding with the recommended action before the Council but that he would agree to continue this item to review it in more detail as long as it does not delay the appointment of a YMCA member to the IRC Subcommittee so that that the project can continue to remain on track.

City Manager Tewes noted that the City does not have the full business terms of a contract. He said that in the course of a year long discussion, staff and the YMCA discussed various subjects. He said that staff has not drafted a contract and has not gone back and forth about the language in the contract. He stated that it would be consistent and in good faith to try to negotiate the terms. He said that he could not sign a contract until he brings it back for Council approval.

Mayor Pro Tempore Chang felt that the City could break even by changing the mode of operation. Instead of providing swimming classes only on Saturdays, swim classes could be offered everyday in order to make money. She suggested that a mode be negotiated where there is at least a break even situation.

Mayor Kennedy said that although it would be an excellent goal to break even, he felt that the Council's number one responsibility is to provide recreational programs to the community. He noted that the City has gone for many years without providing these services to the community and that it was time that the Council provides recreational services to the community. He felt that the City's budget projections provides some funding for this purpose. He did not believe that it was critical that the City break even on every project at the expense of providing services to the community.

City Manager Tewes clarified that staff would negotiate a contract with the YMCA to provide the staffing services to deliver the program that the City Council wants.

Mayor Kennedy felt that the City has the flexibility within the agreement to operate in such a way that the City does not lose money or make more money. He felt that that the Council has the capability of making these decisions further down the line.

Council Member Tate stated that the City could spend a little more money to be able to provide recreational services. However, the money spent would be taken away directly from safety services when the City is in a financial bind. He stated that he could not support this. He noted that the best information the Council has is that the City will lose money on the IRC. In order for him to be comfortable in supporting the action, he has to be a lot more familiar with the options and understand how this whole thing would come together. He stated that he was not comfortable with the information presented thus far. He noted that the \$20,000 subsidy was an estimate and that this amount could be more.

Council Member Carr said that deferring the decision would not affect the IRC schedule. He expressed concern with the discussion taking place about the operations and maintenance costs. He said that the Council needs to decide how each of the centers will break even. He did not believe that the break even scenario should be on the backs of the users or the individuals buying passes. He felt that there can be room within the general fund. He did not believe that the funds have to come from public safety. He said that taking funds from the general fund and from other services would be a policy question that the Council would need to spend time on. He noted that City is spending money now in designing a facility. He did not believe that he was hearing a suggestion that the Council wait for the studies from the Sports Management Group before moving forward with anything associated with the IRC as this would be a concern to him. He felt that the schedule needs to keep moving forward and that he too would be interested to see what the Sports Management Group would come back with based on the new design of the smaller center and the comments made two weeks ago. He did not believe that their information was so important to halt the timeline of the IRC as this would affect the entire project.

Mayor Pro Tempore Chang inquired what guidelines the Council would like to give the IRC subcommittee (e.g., should additional office space be added to house YMCA staff?).

Council Member Carr indicated that adding administrative offices for YMCA staff at the IRC was not part of the matrix before the Council.

City Manager Tewes stated that the City would not need to change the office alignment as an office would be required by either a City aquatics director or YMCA aquatics director. The same would apply to YMCA or City life guards/staff as they will need a place to assemble. He said that the City is not providing general administrative office space to the YMCA at this facility. The individuals who will be providing services would be housed at this facility.

Mayor Kennedy stated that it would be his recommendation to the design review committee, consisting of Council Member Sellers and Mayor Pro Tempore Chang, that the City gets a YMCA person on board

and listen to what they have to say. The committee could ask the YMCA representative what their recommendations would be with respect to space allocations for swimming versus the programs. He recommended that the City take advantage of the expertise of the YMCA. He recommended that the City try to incorporate the YMCA's recommendations so that the City protects the options to maximize the benefits.

Council Member Sellers said that the Council needs to keep in mind the amount of work that has taken place to date. Being discussed are very small refinements. He noted that the City has been going through this process for several years. The Council has visited sites in the area and in other parts of the Country with the Sports Management Group, noting that the City has worked with the Sports Management Group for several years getting to this point. He said that there are still policy decisions to be made, but that they are getting smaller in number as the Council proceeds. He felt that there was significant room to continue to make the IRC better but that there will not be wholesale changes. He felt that the Sports Management Group would continue to provide input to the IRC and the YMCA representative will be able to do so along with the other individuals in the IRC committee. He recommended that the City continue to work toward making this the most cost effective facility. He would support holding off on a decision on this item if that is the consensus of the Council.

Mayor Kennedy did not see a benefit to delaying the decision. He did not see that the questions would be any different a month or two from now. He said that information will be flowing in as the City goes through the process. He felt that these efforts can happen concurrently if the Council authorizes the action to proceed this evening.

Council Member Sellers noted that all the information being reviewed will be pertinent when the Council gets to the final decision making point, the contract for staffing with the YMCA.

Recreation and Community Services Manager Spier said that the Sports Management Group is ready to proceed with its analysis but that they are waiting for the final conceptual design that is currently being worked on by Assistant Public Works Director Struve. She said that one of the components is taking out the climbing wall and that the Sports Management Group is looking at this cost factor. She said that the Sports Management Group is just beginning the new comparison of the square footage. It was her belief that their analysis would be completed in approximately two months. She said that the City would be moving forward with the next step in the design process before receiving the information from the Sports Management Group.

Action: *Council Member Sellers made a motion, seconded by Council Member Carr, to **Direct** Staff to Negotiate a Contract with the Mt. Madonna YMCA for the Provision of Aerobics, Aquatics and Fitness Programs at the Indoor Recreation Center.*

Action: *Council Member Sellers made a motion, seconded by Council Member Carr, to **Invite** the YMCA to Identify a Staff Person to be involved in the Indoor Recreation Center Design Process.*

Mayor Pro Tempore Chang said that she would not like to see this project become a negative cash flow project. She stated that she would support the motion if the desired result is that the project ends up being a balanced project. If this is not the case, she would not be able to support the motion. She requested that the motion be amended to state that it is the intent that this project will result in a break even project.

Council Member Sellers said that working out the negotiations on the staffing levels with the YMCA would not have an impact on the motion. He noted that the Council still has a final decision to make on the bottom line.

Mayor Kennedy said that this vote is not the final action. The action is to negotiate an agreement, noting that the negotiated agreement would need to return to the Council for approval.

Mayor Pro Tempore Chang said that she is recommending that it be stated that the motion would stipulate that there is to be a break even intention and that it does not necessarily have to state that the end result has to be a break even scenario.

Mayor Kennedy said that the question of negotiating an agreement on the cost and the number of staff is a separate issue from operating the facility at a break even scenario.

Council Member Carr stated that he would not support an amendment to the motion. He felt that staff would be negotiating in the best interest of the City. He said that he is always concerned when the Council sets parameters too tight, tying the hand of staff when they are asked to negotiate. He has faith that City staff would negotiate fairly and in the best interest of the citizens and tax payers. He felt that the Council was simply making a policy decision this evening about whether City staff can engage the YMCA in contract negotiations. He said that the Council will need to make significant policy decisions on the different staffing levels whether it is City staff or YMCA staff to help decide what the bottom line will be on this facility. The Council will be spending a lot of time discussing big questions in the future.

Vote: *The two motions **carried** 3-2 with Mayor Pro Tempore Chang and Council Member Tate voting no.*

**16. COMMUNITY CONFERENCE ON LEADERSHIP, DEVELOPMENTAL WORKSHOP
AND EVENING OF THE ARTS EVENT – TUESDAY, OCTOBER 21, 2003**

Recreation and Community Services Manager Spier presented the staff report. She requested that the Council hold Tuesday, October 21, 5-8 p.m. for an Evening of the Arts Event to be held at the Community and Cultural Center.

Mayor Kennedy opened the floor to public comment.

David Reisenauer, President of Morgan Hill Community Foundation Board, thanked the Council for its commitment to the Foundation. He stated that the Board of Directors wants to focus on linking the needs of the community and the resources within the community. He said that an area that the

Foundation would like to focus on is leadership and the needs of non-profit organizations. As it looks at its grant cycle, the Foundation began to look at how it can better serve the community. The Board felt that it was important to bring the community leaders together in a summit/conference to focus on collective gaps in terms of what the non-profits provide and their needs. He stated that part of the event is bringing the Community Foundation of Silicon Valley and the Arts Council to conduct a grants workshop in the morning and to focus on the mission and the vision of the Morgan Hill Community Foundation. The Foundation will be targetting sessions with non profits in 3 of the 9 major areas. A combined forum will be held, to be facilitated by City Manager Tewes, to talk about the next steps. He understands that Leadership Morgan Hill has agreed to co-sponsor this event. He noted that Leadership Morgan Hill has a supply of individuals who want to get involved with community non profits. Many non profit organizations have a demand for leaders who are willing to come onto their boards. He requested Council support in terms of providing the venue for free and help with the overall cost of the event with a \$2,500 donation.

Mayor Kennedy stated that the Council has been very frugal on how it provides funds for various organizations. He inquired as to for the basis for the \$2,500 request.

Mr. Reisenauer said that if you look at the budget for the event, it includes costs for the honorariums, the artist, and costs for the luncheon, invitations, and materials to be provided to the attendees. He stated that the Foundation will be applying for a \$5,000 grant from the Arts Council to help offset some of the costs. The Morgan Hill Community Foundation Board has authorized the expenditure of the balance.

No further comments were offered.

Council Member Sellers said that he was excited about the event and that he was pleased to see the recreation division and departments participating. He felt that the in kind services were very easy to support. He said that the City does not have the \$2,500 being requested. He stated that he would like to try and figure out a way to sustain this forum in future years. He requested that the Foundation forgo the cash contribution this year and that it be understood that the City is interested in subsequent years on how it might be able to fund the forum. The Council could creatively think about resources it can bring to the forum.

Council Member Tate concurred with the comments expressed by Council Member Sellers.

Mayor Kennedy agreed that this is a worthwhile cause and that he supports it. He stated that he would be willing to provide some sort of City financial assistance and recommended \$1,000 be granted as a sign of good faith. He knows that the Community Foundation, Leadership Morgan Hill and the Arts Council are doing a great job and that the City is growing in the appreciation and involvement of the arts. Although these are very difficult times for the City, he felt that it would be appropriate to provide some show of good faith effort in addition to the in kind support. He recommended that funding come out of the City's reserves.

Mayor Pro Tempore Chang supported Mayor Kennedy's recommendation of \$1,000 in funding.

Council Member Carr stated that this was a great idea and a wonderful opportunity for the City and the community. He recommended that the Council move forward with the things that Council Member Sellers talked about. The Council could ask that City staff sit down with Mr. Reisenauer and others to talk about the \$2,500. He felt that there were other things that the City could do other than a cash outlay to help the Foundation move forward with the forum or find other ways to cut costs so that the Foundation can redirect dollars into these areas. He said that he had some fund raising opportunities that he would be willing to discuss with Foundation Board members.

Council Member Tate stated that he would be willing to sit down with Foundation members and share some of his ideas.

Council Member Sellers encouraged the Foundation to include the participation of the Morgan Hill Downtown Association as they might be able to provide other opportunities for in kind participation as well where it might be mutually beneficially.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** Co-sponsorship of This Event by Providing In-Kind and Staff Support.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously **Approved** Applying for an Artistic and Program Excellence Grant Through the Arts Council Silicon Valley.*

Redevelopment Agency Action

OTHER BUSINESS:

17. OFF-SITE IMPROVEMENTS FOR DAY WORKER CENTER

Director of Business Assistance and Housing Services Toy indicated that originally, staff was going to recommend that it be directed to prepare the necessary agreements to fund the off site improvements for the day worker center, bringing them back to the Agency for further consideration. However, several issues have arisen with the developer since Friday. While staff is working to resolve these issues and develop solutions, staff is not in a position to make a recommendation to the Agency Board at this time. He indicated that it was originally estimated that day worker off site improvements would cost approximately \$90,000. However, in discussions with public works staff, staff believes that this cost is low by approximately 20% and that it is estimated that the off site improvements would cost approximately \$107,000. It was also determined that the project may require storm drain that would add another \$21,000 to the cost. Staff did not include utility under grounding for this piece of property at a cost of \$47,000. Therefore, this raises the cost for the improvements to \$175,000 instead of \$90,000. If this was the only issue, staff may have recommended a “not to exceed” amount for the project. However, the developer has indicated that he is not willing to fund the water and sewer connections needed for the day worker center. The developer believes that these improvements have limited benefit to the permanent development of the project as it is his belief that he would need to either reinstall or

resize these improvements at a later date. Therefore, he is not willing to absorb these costs at this time. Staff believes that it would be prudent to sit down and try to work out these issues with the developer and the day worker center. Once these issues are resolved or solutions/recommendations identified, staff would bring this back to the Agency Board for consideration.

Chairman Kennedy inquired what the delay would do to the schedule of getting the day worker facility built.

Mr. Toy indicated that staff invited the developer and representatives from the day worker center to attend the meeting and provide the Agency Board with a schedule. He stated that he informed the developer that staff would be recommending that this item be continued.

Agency Member Sellers felt that it made sense to require some of the improvements before getting the project underway. He noted that the day worker center is a temporary, interim use for the site. He felt that the under grounding should take place when development takes place due to the financial costs involved. He inquired whether the under ground improvements need to be triggered at this time as the improvements would need to be torn up with the permanent use.

Mr. Toy responded that there is no provision in the municipal code that allows interim uses not to trigger off site improvements or utility under grounding. In this case, the utility under grounding would be in the form of in lieu fees or the cost for under grounding. He stated that staff is estimating that the costs are about the same. This cost would normally be absorbed by a project putting a use onto a piece of property. At this time, there is no mechanism to provide for other alternatives other than the city funding the improvements itself unless the municipal code is amended.

Executive Director Tewes informed the Agency Board that there was considerable discussion about the same issue for the property located next door. The project proponent initially asked the Agency Board to defer the improvements. Staff pointed out the same issue at the time in that there is a provision in the municipal code for the payment of in lieu fees rather than installing the actual improvements. The existing municipal code does not waive the installation or in lieu fees.

Mr. Toy informed the Agency Board that staff would be returning with an in lieu fee financing program to help finance the fees for this portion of the project.

Agency Member Carr inquired whether there were specific requirements relating to the day worker center as part of the Agency Board's approval of the granary project and the significant investment from the RDA into that project. If so, what were those requirements?

Mr. Toy responded that the requirements were that the interim day worker center would be allowed on the property for at least three years. It was his belief that the day worker center had to be up and operational before fall of 2004.

Agency Member Carr noted that things are moving forward with the granary project. He expressed concern that the Agency Board invested significantly into the granary project because the City would get

this public benefit project. Now, this public benefit project is being held up by the developer while he is moving forward with his private project. He did not know if there were ways for the City to slow down the granary project until some of the details are worked out. He expressed concern that the City was being taken by promises that may not be fulfilled as part of the City's significant investment on the private project.

Mr. Toy said that when staff sits down with the developer, it will point to the DDA that the City has with the developer and the timeframes for performance. He felt that the developer had certain assumptions in his mind about what was allowable and what was not allowable. He indicated that staff received the estimate of \$90,000 last week from Morgan Hill Engineering. In terms of storm drain, the developer thought that he could have an engineering solution that provides an alternative for the storm drain. It was his belief that the developer was thinking that the project would not have to pay in lieu fees initially. He stated that unless the municipal code is amended, there is no way to defer the improvements. Thus, the reason staff was coming forward with the request for the RDA to fund the improvements. Should the Council decide to amend the municipal code, the City would have to evaluate this in terms of what impacts this would have on other projects.

Executive Director Tewes indicated that when the Agency Board had this conversation with the land owner, the Agency Board directed staff to return with a program to help private parties finance the payment of in lieu fees. This is what staff will return with.

Chairman Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Tate, the Agency Board unanimously (5-0) **Continued** this item to a future meeting date.*

City Council and Redevelopment Agency Action

OTHER BUSINESS:

18. ACTING MAYOR PRO TEMPORE/VICE-CHAIR FOR THE SEPTEMBER 17, 2003 CITY COUNCIL/REDEVELOPMENT AGENCY JOINT MEETING

Mayor/Chairman Kennedy indicated that he and Mayor Pro Tempore Chang would be traveling to formalize a Sister City relationship with San Martin di Hidalgo the week of September 14, 2003 and would not be in attendance at the September 17 Council meeting. Therefore, a Council member needs to be appointed as acting Mayor Pro Tempore/Vice-chair. He indicated that both Council Member Sellers and Tate agreed that Council Member Sellers would be the appropriate individual to serve this role. He stated that this would be his recommendation.

Action: *On a motion by Mayor Pro Tempore/Vice-Chair Chang and seconded by Council/Agency Member Tate, the Council/Agency Board unanimously (5-0) **Ratified** the Mayor/Chairman's Appointment of Council/Agency Member Sellers to serve as Acting*

Mayor Pro Tempore/Vice-Chair for the September 17, 2003 Joint City Council and Redevelopment Agency Meeting.

City Manager/Executive Director Tewes indicated that Council Member Sellers would be Acting Mayor Pro Tempore for the entire period of time that Mayor Kennedy and Mayor Pro Tempore Chang were out of the area, especially in the event of a natural disaster.

19. REVIEW CITY COUNCIL AND REDEVELOPMENT AGENCY'S NOVEMBER, DECEMBER, AND JANUARY MEETING SCHEDULE

Council Services and Records Manager presented the staff report. She informed the Council that staff is proposing that non emergency staff members be furloughed from December 26, 2004 through January 2, 2004, reopening City Hall offices on January 5, 2004.

Mayor Kennedy suggested that a special joint meeting be held with all boards and commission prior to a Tuesday Planning Commission meeting.

City Attorney Leichter indicated that training materials are produced by the League of California Cities on general ethics, specifically as they pertain to conflict of interest laws. She indicated that staff would like to present this information to the Council and to the Boards and Commissions as well. She said that the Council could have a more in depth analysis along the lines of the conversation she had with Council Member Tate at a Council goal setting workshop or a separate workshop. She indicated that a general ethics presentation has not been conducted for a while and suggested that a workshop session be held.

Action: *By consensus, the City Council/Agency Board adjusted their November, December and January meeting schedule as follows: Scheduled a special meeting on November 12, 2003, if necessary; Cancelled its November 26, 2003 meeting; Scheduled a December 10, 2003 meeting, if necessary; December 24 a City Holiday; Cancelled the January 7, 2004 meeting; and scheduled a Special January 14, 2004 meeting. All other meeting dates to remain as scheduled.*

Action: *By consensus, the City Council/Agency Board, Agreed to set the following workshop dates: 1) scheduled a Joint City Council, Board and Commission ethics/conflict of interest workshop for Tuesday, November 11 at 5:00 p.m.; 2) scheduled a November 12, 6:00 p.m. workshop to discuss the Morgan Hill Plaza Repositioning Strategy; and 3) **Deferred** scheduling the Annual Goal Setting Session in order to coordinate this session as part of the Council's retreat.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Council Member Tate requested that the September 2, 2003 Senior Advisory Committee comments on the Indoor Recreation Center be agendized for discussion on how the Council should follow up on the comments.

Council Member Sellers further recommended that there be discussion about opportunities for interaction with the Senior Advisory Committee as there are significant policy decisions that the Council will be making. He wanted to make sure that the Council includes ways of communicating these to the Senior Advisory Committee.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 9:33 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY